



[Billing Code: 4810–31–P]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2012–0005]**

**[T.D. TTB–111; Ref: Notice No. 130]**

**RIN: 1513–AB88**

### **Establishment of the Elkton Oregon Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final Rule; Treasury Decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 74,900-acre “Elkton Oregon” viticultural area in Douglas County, Oregon. The viticultural area lies totally within the Umpqua Valley viticultural area and the multi-county Southern Oregon viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved American viticultural areas.

### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

### Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following—

- Evidence that the area within the proposed viticultural area boundary is locally or nationally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;

- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soil, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

### **Elkton Oregon Petition**

TTB received a petition from Michael Landt, on behalf of himself and the owners of seven other Elkton area vineyards, proposing the establishment of the “Elkton Oregon” American viticultural area in Douglas County in southwestern Oregon. The proposed viticultural area encompasses approximately 74,900 acres, with 12 commercially-producing vineyards covering 96.5 acres, according to the petition. The petition also included a map indicating that the vineyards are disbursed throughout the proposed viticultural area.

The petition indicated that the proposed Elkton Oregon viticultural area is located entirely within the larger Umpqua Valley viticultural area (27 CFR 9.89), which, in turn, is located entirely within the Southern Oregon viticultural area (27 CFR 9.179). The proposed viticultural area covers approximately 11 percent of the 689,904-acre Umpqua Valley viticultural area and 0.04 percent of the much larger 1,977,298-acre Southern Oregon viticultural area. The petition states that

the marine influence from the Pacific Ocean distinguishes the proposed viticultural area from the larger Umpqua Valley.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 130 in the **Federal Register** on June 19, 2012 (77 FR 36433), proposing to establish the Elkton Oregon viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include climate and topography. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. The proposed Elkton Oregon viticultural area contains approximately 74,900 acres. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area and a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 130.

In Notice No. 130, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. In addition, given the proposed viticultural area's location within the existing Umpqua Valley and Southern Oregon viticultural areas, TTB also solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates the proposed viticultural area from the two existing viticultural areas. TTB also asked for comments on whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding

Umpqua Valley or Southern Oregon viticultural areas that the proposed Elkton Oregon viticultural area should no longer be part of the two existing viticultural areas. The comment period closed on August 20, 2012.

In response to Notice No. 130, TTB received five comments. The commenters were all people who demonstrated their familiarity with the region of the proposed viticultural area, including a self-described wine writer, local growers and winery owners, and a member of the Elkton City Council. All five comments supported the establishment of the Elkton Oregon viticultural area. TTB received no comments in opposition of the Elkton Oregon viticultural area as proposed. None of the comments addressed the question of whether or not the Elkton Oregon viticultural area is so distinguishable from the Umpqua Valley and Southern Oregon viticultural areas that it should no longer be part of either existing viticultural area.

#### **TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 130, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 74,900-acre Elkton Oregon viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the “Elkton Oregon” viticultural area in Douglas County, Oregon, effective 30 days from the publication date of this document. TTB also determines that the land within the Elkton Oregon viticultural area will remain part of both the Umpqua Valley and Southern Oregon viticultural areas.

TTB notes that the name “Elkton OR” is an equivalent form of the petitioned-for name “Elkton Oregon.” Although the original petition only proposed the name “Elkton Oregon” in reference to the proposed viticultural area, TTB believes that also allowing the abbreviated “Elkton OR” as an alternative name is appropriate. TTB does not believe allowing the abbreviated form as an alternative viticultural area name would cause consumer confusion. Therefore, the part 9 regulatory text set forth in the proposed rule in Notice No. 130 and in this final rule specifies both “Elkton Oregon” and “Elkton OR” as names for this proposed viticultural area.

#### Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

#### Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

#### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, “Elkton Oregon,” and the alternative name, “Elkton OR,” are both recognized as names of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using “Elkton Oregon” or “Elkton OR” in a brand name, including a trademark, or in another label

reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

The establishment of the Elkton Oregon viticultural area will not affect any existing viticultural area, and any bottlers using "Umpqua Valley" or "Southern Oregon" as an appellation of origin or in a brand name for wines made from grapes grown within the Elkton Oregon viticultural area will not be affected by the establishment of this new viticultural area. The establishment of the Elkton Oregon viticultural area will allow vintners to use "Elkton Oregon," "Elkton OR," "Umpqua Valley," and "Southern Oregon" as appellations of origin for wines made from grapes grown within the Elkton Oregon viticultural area.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.



Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

### **Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.229 to read as follows:

#### **§ 9.229 Elkton Oregon.**

(a) Name. The name of the viticultural area described in this section is “Elkton Oregon”. “Elkton OR” may also be used as the name of the viticultural area described in this section. For purposes of part 4 of this chapter, “Elkton Oregon” and “Elkton OR” are terms of viticultural significance.

(b) Approved maps. The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Elkton Oregon viticultural area are titled:

- (1) Kellogg Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;
- (2) Old Blue Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;
- (3) Devils Graveyard Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;

- (4) Elkton Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;

and

- (5) Yellow Butte, Oregon-Douglas Co., Provisional Edition 1987.

(c) Boundary. The Elkton Oregon viticultural area is located in Douglas County, Oregon. The boundary of the Elkton Oregon viticultural area is described as follows:

(1) The beginning point is on the Kellogg map at the intersection of the T23S/T24S and R7W/R8W common lines. From the beginning point, proceed northwest in a straight line, crossing onto the Old Blue map, to the eastern-most intersection of the T22S/T23S and R8W/R9W common lines; then

(2) Proceed north along the R8W/R9W common line onto the Devils Graveyard map, across the Umpqua River, to the intersection of the R8W/R9W common line with the 1,000-foot elevation line along the western boundary of section 30, T21S/R8W; then

(3) Proceed generally east along the meandering 1,000-elevation line, crossing over Patterson Creek, Weatherly Creek headwaters, Cedar Creek, and House Creek; continue following the 1,000-foot elevation line onto the Elkton map, back to the Devils Graveyard map, returning to the Elkton map, and then continuing generally east and southeast across Paradise Creek and Little Tom Folley Creek, to the intersection of the 1,000-foot elevation line with an unnamed, improved road in the southeast quadrant of section 4, T22S/R7W; then

(4) Proceed south-southwest along the unnamed, improved road to the intersection of that road with an unimproved logging road, approximately 1.65 miles due north of the Mile 5 marker on Elk Creek, section 9, T22S/R7W; then

(5) Proceed southeast in a straight line, passing through the southeast corner of section 9, T22S/R7W, to Elk Creek, section 15, T22S/R7W; then

(6) Proceed generally southeast (downstream) along Elk Creek to the State Route 38 bridge at BM 172, section 15, T22S/R7W; then

(7) Proceed south in a straight line to the intersection of the 1,000-foot elevation line and the section 22 south boundary line, T22S/R7W; then

(8) Proceed generally south, west, and then north along the meandering 1,000-foot elevation line, crossing first onto the Kellogg map, then crossing back and forth between the Kellogg map and the Yellow Butte map, returning to the Yellow Butte map to the intersection of the 1,000-foot elevation line with the R7W/ R6W common line on Bell Ridge, along the section 1 east boundary line, T23S/R7W; then

(9) Proceed southeast in a straight line to the intersection of the line with the 1,000-foot elevation line and an unnamed, unimproved road, section 7, T23S/R6W; then

(10) Proceed south and west along the meandering 1,000-foot elevation, crossing back and forth between the Kellogg and Yellow Butte maps, and finally returning to the Kellogg map, to the intersection of the 1,000-foot elevation line with the T23S/T24S common line along the section 3 north boundary line, T24S/R7W; and then

(11) Proceed west along the T23S/T24S common line to the beginning point.

Signed: November 1, 2012.

**John J. Manfreda**

Administrator.

Approved: November 29, 2012

**Timothy E. Skud**

Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).